



INTERIOR BOARD OF INDIAN APPEALS

Three Affiliated Tribes of the Fort Berthold Reservation
v. Aberdeen Area Director, Bureau of Indian Affairs

23 IBIA 160 (01/14/1993)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION

v.

ABERDEEN AREA, DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 92-174-A

Decided January 14, 1993

Appeal from denial of two applications filed under the FY 1992 Planning Grant program.

Vacated and remanded.

1. Indians: Financial Matters: Financial Assistance

In determining which applications will be funded, it is improper for the Bureau of Indian Affairs to combine applications for funding under one grant program with applications under another grant program when the criteria and purposes of the two grant programs are different.

APPEARANCES: Wilbur D. Wilkinson, Chairman, for appellant.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant Three Affiliated Tribes of the Fort Berthold Reservation seeks review of an April 16, 1992, decision issued by the Aberdeen Area Director, Bureau of Indian Affairs (Area Director; BIA), denying its application for two grants under the FY 1992 Planning Grant program. For the reasons discussed below, the Board of Indian Appeals (Board) vacates that decision, and remands this matter to the Area Director for further consideration in accordance with this opinion.

On January 2, 1992, BIA announced the availability of funding under two grant programs: Planning Grants and Training/Technical Assistance Grants. 57 FR 160 (Jan. 2, 1992). Appellant filed two separate applications under the Planning Grant program for continuation funding of its criminal justice improvement and due process administration programs. Each application was reviewed and scored separately.

By letter dated April 16, 1992, the Area Director denied appellant's applications. Appellant sought review of this decision by the Board. Only appellant filed a brief.

On appeal appellant contends that, in determining which applications would be funded, the Area Director improperly combined applications filed under the Planning and Training/Technical Assistance programs so that applicants for planning grants were competing against applicants for training and

technical assistance grants. Appellant contends that the Federal Register clearly provided for two separate grant programs, each with its own criteria and purposes, and that combining applications filed under the two programs for purposes of awarding funds was a violation of due process.

The Federal Register announcement stated:

Each of these grant initiatives has its own criteria and guidelines which are designed to accomplish specific objectives for a targeted subgroup of tribes. For instance, the criteria for training and technical assistance grants requires that the tribal applicants document specific needs and/or problems and devise step-by-step strategies to satisfy the needs or resolve the problems which are impediments to their growth. Using the same principle, criteria for planning grants were formulated to specify that these grants would be awarded to the most capable tribes. These are tribes not normally in need of strategical technical assistance since they generally have clean audits, operate mature contracts and have the reputation of administering "good" programs and service delivery systems. Tribes most capable of planning and operating programs may receive planning grants for comprehensive program planning, program redesign, as well as planning for reservation resources development.

57 FR at 160.

The Area Director's April 16, 1992, denial letter states at page 1:

Aberdeen received a total of \$307,500 for the three 1992 grant competitions: (1) small tribes core management, (2) planning, and (3) training/technical assistance. Of the total funds available, \$87,900 was set aside for small tribes core management needs. The balance, (\$219,600), is being awarded to the planning and training/technical assistance applicants whose proposals scored the greatest number of points when evaluated in accordance with the rating process described in the Federal Register.

The administrative record contains a tally sheet entitled "1992 Planning and Training/Technical Assistance Ranking," which lists thirteen applications by name of applicant. The tally sheet shows the average score, the funds requested, and the funds awarded. The total funds awarded was \$219,600. The tally sheet does not show the specific program under which each application was filed.

[1] The Federal Register announcement clearly contemplated that funding would be available under two separate and distinct grant programs, which were related only in that they were announced at the same time. There is no indication in the announcement that applicants under the two programs were expected to compete against one another. Because the Area Director's denial letter and the administrative record strongly suggest that applications were

approved or denied based solely upon the score received, without regard to the program under which the application was filed, and because the Area Director did not refute appellant's allegation or file a brief addressing this issue, it appears that the Area Director erred in the awarding of funds under the grant programs.

However, it is not possible for the Board to determine from the record presently before it under which program the other applications received by the Aberdeen Area Office were filed. It is possible that applications filed under both programs were successful. Thus, the Board cannot determine whether, but for the apparent error committed, appellant's applications, or either of them, would have been funded. Therefore, although the Area Director's decision must be vacated, the Board finds that this matter should be remanded to the Area Director for further consideration. If the Area Director determines that, but for the apparent error, appellant's applications, or either of them, would have been funded, he should also determine an appropriate remedy if, as the Board suspects, there are no funds for the FY 1992 Planning Grant program still available.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the April 16, 1992, decision of the Aberdeen Area Director is vacated, and this matter is remanded to him for further consideration in accordance with this opinion.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

I concur:

//original signed
Anita Vogt
Administrative Judge